

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE: BP ERISA LITIGATION**

MDL No. 2185

Civil Action No. 4:10-cv-04214  
Hon. Keith P. Ellison

**ORAL ARGUMENT REQUESTED**

**DEFENDANTS' MOTION TO DISMISS  
THE CONSOLIDATED COMPLAINT**

Pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendants BP Corporation North America Inc., BP p.l.c., BP America Inc., BP North America Inc.'s Board of Directors, the Savings Plan Investment Oversight Committee ("SPIOC"), Lord John Browne, Corey Correnti, Richard J. Dorazil, James Dupree, Patrick Gower, Anthony Hayward, Jeanne M. Johns, Robert A. Malone, Lamar McKay, Stephanie C. Moore, Stephen J. Riney, Brian D. Smith, Neil Shaw, Thomas L. Taylor, and Gregory T. Williamson ("Defendants") respectfully move to dismiss Plaintiffs' Consolidated Complaint in its entirety on the grounds that:

- (1) Count I, alleging breach of a fiduciary duty of prudence and loyalty under the Employee Retirement Income Security Act of 1974 ("ERISA"), does not overcome the presumption of prudence that protects fiduciaries of "eligible individual account plans" against claims alleging imprudent investment in employer stock (*Kirschbaum v. Reliant Energy, Inc.*, 526 F.3d 243, 254-56 (5th Cir. 2008);
- (2) The alleged breaches of an ERISA duty to inform (Count II) fail because they are
  - (a) unrelated to any of the specific disclosure obligations imposed by the statute,

- (b) not connected to any ERISA fiduciary role held by Defendants, (c) not pled with the particularity required under Federal Rule of Civil Procedure 9(b), and (d) fail to allege the essential element of reliance;
- (3) Count III, alleging breach of ERISA's duty to monitor appointees and co-fiduciary liability claims, fail because the allegations are derivative of the substantive claims that are also subject to dismissal and do not state plausible claims under governing ERISA law and pleading standards; and.
- (4) The corporations named as defendants and selected individual defendants named in their capacity as members of the Board of Director of BP Corporation North America, Inc., and named in other specific roles should be dismissed because they are not fiduciaries of the ERISA plans at issue for purposes of the alleged actions at issue and thus not liable under ERISA §§ 404(a) and 409, 29 U.S.C. §§ 1104(a) and 1109.

The grounds for this motion are set forth in Defendants' Memorandum of Law in Support of Their Motion to Dismiss the Consolidated Complaint, and supported by the Declaration of Thomas W. Taylor, filed concurrently herewith.

Dated: July 26, 2011

Houston, Texas

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing has been served by electronic CM/ECF filing, on this 26th day of July, 2011.

*s/Thomas W. Taylor*

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Thomas W. Taylor